IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 318 of 1998
with
CRIMINAL APPEAL No 515 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMANTBHAI BHAYJIBHAI BARIA
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 318 of 1998
MS BANNA S DUTTA for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
MR AY KOGJE, APP, for Respondent No. 1
2. Criminal Appeal No. 515 of 1998
MR AY KOGJE, APP, for Petitioner No. 1
MS BANNA S DUTTA for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE M.S.SHAH

Date of decision: 20/03/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Both these appeals are directed against the common judgment and order dated 31.3.1998 rendered by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.274 of 1996.

2. Samantbhai Bhaijibhai (accused No.1), Arvindbhai Samantbhai (accused No.2) and Manjulaben Samantbhai (accused No.3) were charged with the offence of committing murder of Savkunbhai and Maganbhai on 15.7.1996 and were also charged with the offence of causing grievous hurt to Revliben, wife of Savkunbhai. The accused were charged with the offences punishable under Sections 302, 325, 504 and 34 IPC. By the judgment and order under appeal, the learned Additional Sessions Judge has convicted accused No.1 of the offence punishable under Sections 302 and 325 IPC but has acquitted accused No.1 of the offence punishable under Section 504 IPC. By the same judgment and order, the learned Sessions Judge has acquitted accused Nos.2 and 3 of all the offences with which they were charged in the above numbered Sessions Case. Accused No.1 - Samantbhai has accordingly filed Criminal Appeal No.318 of 1998 for challenging his conviction and the State has filed Criminal Appeal No.515 of 1998 for challenging acquittal of accused Nos. 2 and 3 of the offences punishable under Sections 302, 504, 34 and 325 of IPC. Since both the appeals arise from the same sessions case and involve common questions of fact, both the appeals have been heard together and are being disposed of by this common judgment.

3. The prosecution case was that Savkunbhai, Samantbhai, Maganbhai and Chhaganbhai were four brothers residing in village Kothara of Devgadh Baria Taluka of Panchmahals District. Samantbhai was residing separately from the other three brothers who were staying together. Samantbhai had property dispute with the other three brothers. 15th July, 1996 was the festival of Divasa which was an important festival being celebrated by the tribals in the village. As a part of the celebrations, a goat was slaughtered at Savkunbhai's residence and the three brothers took their share of the meat and the rest was given away to the other people in the village. When the three brothers and their family members were taking lunch at about 12.00 noon on 15.7.1996, the three accused lead by accused No.1 - Samantbhai with sticks in their hands went to the residence of the other three brothers

and started quarreling that when a goat was already slaughtered at the residence of Chandu Rathwa why another goat was slaughtered at the residence of Savkunbhai. The accused also started quarreling with the other three brothers as to why accused No.1 was not being given his share of the property. Accused No.1 abused and assaulted Savkunbhai but when another brother Maganbhai tried to intervene, accused No.1 assaulted Maganbhai also and the accused gave stick blows on the head of Savkunbhai and Maganbhai and also inflicted blows on Revliben, wife of Savkunbhai. The serious injuries inflicted on the head of Savkunbhai and Maganbhai resulted into death of Savkunbhai on the way to hospital at Shivrajpur and the death of Maganbhai on the way to hospital at Baroda. The prosecution also alleged that accused Nos.2 and 3 also accompanied accused No.1 to the residence of Savkunbhai and his two other brothers and accused Nos.2 and 3 had also assaulted the deceased and the eye witnesses with the sticks. Accordingly, all the accused were charged with the offences punishable under Sections 302, 504, 34 and 325 IPC.

4. At the trial, the prosecution examined PW 1 complainant -Chhaganbhai Bhayjibhai (Exh.14 Pg.65) the youngest brother, PW 7 Leelaben Chhaganbhai, wife of the complainant (Exh.39 Pg.179), PW 8 Revaben Savkunbhai, widow of deceased Savkunbhai (Exh.40 Pg.183), PW 12 Somliben Maganbhai - widow of deceased Maganbhai (Exh.45 Pg.201) who were all examined as eye-witnesses to the incident. The prosecution also examined the medical witnesses who had carried out the post-mortem of the dead bodies of the two deceased brothers - Savkunbhai and Maganbhai and also the Doctor who had examined injured witness Somliben Maganbhai.

5. After considering the oral and documentary evidence on record, the learned Sessions Judge came to the conclusion that the prosecution had proved beyond reasonable doubt that accused No.1 Samantbhai had given stick blows on the head of Savkunbhai as well as on the head of Maganbhai and had caused death of both the persons and had also inflicted stick injury on Somliben. However, the learned Sessions Judge took the view that the prosecution had failed to prove beyond reasonable doubt that accused Nos. 2 and 3 had the common intention of causing death of Savkunbhai and Maganbhai or had inflicted any injury on the injured witnesses. Accordingly, accused No.1 came to be convicted of the offences punishable under Sections 302 and 325 IPC and sentenced to suffer life imprisonment. Accused Nos.2 and 3 came to be acquitted of all the offences. Hence these

cross appeals by accused No.1 against his conviction and by the State against acquittal of accused Nos.2 and 3.

6. At the hearing of these appeals, Ms Banna Dutta, learned counsel appointed for the accused in both the appeals has made the following submissions:-

(i) According to the prosecution case, the incident took place at 12.00 noon whereas the complaint (Exh.15) came to be filed at about 6.00 PM. There was, therefore, delay in filing the complaint which is fatal to the prosecution case.

(ii) The learned Sessions Judge has erred in not acquitting accused No.1 though the deceased had assaulted accused No.1 for which NC complaint (Exh.62, Pg.251) was filed by accused Nos.1 and 2 at about 5.00 PM on the same day i.e. 15.7.1996. As per the said complaint it was the deceased who had gone to the residence of the accused and assaulted accused No.1 with stick blows which resulted into blood flowing from the head of accused No.1 and it was accused No.3, wife of accused No.1 and other relatives of the accused rushed to the spot that accused No.1 was saved.

(iii) Even if accused No.1 could not be acquitted of the offences in view of the above complaint (Exh.62), at least the accused could not have been convicted of the offence punishable under Section 302 and the case would fall under Section 304 Part II.

(iv) Accused No.1 had clearly stated in his further statement under Section 313 of the Code of Criminal Procedure, 1973 that the deceased were aggressors and that Savkunbhai had tried to outrage the modesty of accused No.3, wife of accused No.1, and, therefore, accused No.1 had tried to protect his wife and in the resulting fight, ultimately, the deceased succumbed to the injuries. Hence accused No.1 was entitled to be given the benefit of his right of self-defence.

7. On the other hand, Mr Kogje, learned Additional Public Prosecutor has supported the judgment of conviction against accused No.1 and has submitted that accused Nos.2 and 3 also ought to have been convicted of the offences punishable under Sections 302, 504 and 34 IPC as all the three accused had gone to the residence of the deceased with sticks and had thus common intention of

causing the death of Savkunbhai and Maganbhai.

8. As regards the first contention urged by the learned counsel for accused No.1, appellant in Criminal Appeal No.318 of 1998, it is not possible to hold that there was any delay in filing the FIR. The incident in question took place at 12.00 noon on 15.7.1996. Out of the four brothers residing in a small village called Kothara in a backward tribal area of Devgadh Baria taluka in Panchmahals district, one brother had inflicted serious injuries on the head of two other brothers and that left only the youngest brother i.e. Chhaganbhai to rush both the seriously injured brothers as well as one injured female member to the hospital for their immediate treatment. One of the brothers Savkunbhai succumbed to the injuries on the way to the nearest hospital and the other brother succumbed to the injuries when he was being rushed to the hospital at Baroda which is at a distance of at least 70-80 kms. from the village in question. Under the circumstances, the fact that the complaint came to be lodged by younger brother Chhaganbhai against Samantbhai-accused No.1 and his son at police beat near village Kothara at 6 O'clock evening on the same day, it can be said that the complaint was filed at the earliest available opportunity and, therefore, it has to be held that FIR was filed within reasonable time and there was no delay in filing the FIR.

9. Coming to the second contention about NC complaint (Exh.62), no credence can be given to the said complaint. Apart from the fact that as many as four eye witnesses were examined at the trial, in cross-examination of any of the said witnesses, no question was put regarding the alleged assault either of the deceased brothers Savkunbhai or Maganbhai on any of the accused except a vague question - whether the deceased had assaulted the accused ? According to the case in the complaint (Exh.62) filed by the accused, the deceased had gone to the house of the accused but even such a question was not put to the eye-witness whether the deceased had gone to the house of the accused. The version of the eye witnesses that the accused had gone to the house of the deceased was not at all challenged. According to the cross complaint, at 10 O'clock in the morning on 15.7.1996, the deceased had gone to the house of the accused to quarrel over the slaughter of a goat. Even as per the prosecution case, the village people had decided that one goat is to be slaughtered by Chandu Rathwa and the meat was to be shared by all. Hence when the deceased had slaughtered one goat at their own place, there was no question of the deceased going to the house

of the accused to quarrel about slaughter of one more goat. In fact the prosecution case that the incident took place at 12.00 noon at the house of the deceased when the deceased and the other family members were having lunch appears to be much more probable and beyond reasonable doubt and the defence case on the basis of the complaint (Exh.62) appears to be absolutely baseless.

10. Similarly, the defence taken by accused No.1 in his further statement under Section 313 of the Code of Criminal Procedure that Savkunbhai, the eldest brother, had tried to outrage the modesty of accused No.3, wife of accused No.1, is also incredible. All the three brothers, Savkunbhai, Maganbhai and complainant Chhaganbhai were residing in the same family house along with their respective wives and other family members. It is not possible to believe that Savkunbhai, the eldest of the four brothers, would go to the house of accused No.1, one of the four brothers, and would drag accused No.3, wife of accused No.1, out of the house of the accused in presence of accused No.1. Even such a case was not put to the eye witnesses in cross-examination. In fact there is no reason why the younger brother - complainant Chhaganbhai his wife and the wives of the two deceased brothers would make false accusation against accused No.1.

11. In view of the above, we are definitely of the view that the learned Sessions Judge has rightly convicted accused No.1. for the offence of committing murder of Savkunbhai and Maganbhai.

12. As regards the submission of Ms Dutta for accused No.1 that even if accused No.1 can be held to be guilty of the offence of causing death of the two brothers, the case would fall under Section 304 and not under Section 302 IPC, the contention deserves to be rejected. Accused No.1 aged 39 yrs. had inflicted stick blows on the head of his two elder brothers with such force that both the brothers succumbed to injuries on the way to hospital and, therefore, it is a clear case covered by third clause of Section 300. Accused No.1 had inflicted stick blows on the head of his two brothers -Savkunbhai and Maganbhai with such force that they died in less than six hours and, therefore, accused No.1 had inflicted the said stick injuries with the intention of causing bodily injury to the two deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death as clearly opined by the medical witnesses.

13. Similarly, accused No.1 is also found to have inflicted stick blows on Somliben and Revliben which caused the injuries as described in the injury certificates at Exhs.49 and 50. The said injuries were also inflicted with the stick with which he had caused the death of his two brothers. Hence the conviction of accused No.1 for the offence punishable under Section 325 is also justified.

14. Coming to the acquittal appeal filed by the State against acquittal of accused Nos.2 and 3, as per the settled legal position, the High Court is not to reverse the order of acquittal merely on re-appreciation of evidence or merely on the ground that sitting as a trial Court we would have taken a different view in the matter. The learned Sessions Judge has held that the name of accused No.3 was not mentioned in the FIR. Moreover, though the name of accused No.2 was mentioned in the FIR, no role was attributed to him. Even in their evidence at the trial, the eye witnesses have not attributed any active role to accused No.2 -Arvindbhai in the matter of causing serious injuries on deceased Savkunbhai and deceased Maganbhai. It is also not possible to attribute any common intention to accused No.2 because even as per the prosecution case all the three accused had gone to the house of the deceased in order to raise a quarrel about one goat having been slaughtered at the house of the deceased although the village people had agreed that only one goat was to be slaughtered at the house of Chandu Rathwa. It, therefore, appears that all the accused had gone to the house of the deceased but the intention of causing death or grievous injury to any family member of the deceased cannot be attributed to accused No.2 or 3.

15. In view of the above, we find no merit in the acquittal appeal filed by the State against acquittal of accused Nos.2 and 3.

16. For the aforesaid reasons, we dismiss both Criminal Appeal Nos.318 and 515 of 1998.

(B.J. Shethna, J)

(M.S. Shah, J)

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